

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1907.

No. 1806.

502

THE WASHINGTON NATIONAL BUILDING & LOAN
ASSOCIATION, JOSIAH C. STODDARD, TRUSTEE, AND
ADDISON G. DUBOIS, TRUSTEE,

vs.

WILLIAM B. NICHOLS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JULY 9, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1907.

No. 1806.

WASHINGTON NATIONAL BUILDING & LOAN ASSOCIATION OF WASHINGTON, D. C., JOSIAH C. STODDARD AND ADDISON G. DUBOIS, TRUSTEES, APPELLANTS,

vs.

WILLIAM B. NICHOLS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print.
Caption	a	1
Bill	1	1
Answer.....	10	6
Deed between William B. Nichols and Josiah C. Stoddard <i>et al.</i>	15	9
Replication.....	25	14
Stipulation	25	14
Testimony on behalf of complainant.....	26	15
Testimony of William B. Nichols.....	28	16
Direct examination.....	28	16
Cross-examination.....	38	20
Testimony of Tracy L. Jeffords	41	21
Direct examination.....	41	21
Letter to Tracy L. Jeffords from J. C. Stoddard, dated November 6, 1906.....	42	22
Cross-examination	43	23
Decree.....	45	24
Order for appeal and citation.....	47	25
Citation ..	48	25
Memorandum: Appeal bond filed.....	49	26
Designation of record.....	49	26
Clerk's certificate	50	27

In the Court of Appeals of the District of Columbia.

No. 1806.

THE WASHINGTON NATIONAL BUILDING & LOAN ASSOCIATION ET AL.,
Appellants,

vs.

WILLIAM B. NICHOLS.

a Supreme Court of the District of Columbia.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION OF
WASHINGTON, D. C., and JOSIAH C. STODDARD and ADDISON G.
DUBOIS, Trustees, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of
Columbia, at the city of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

December 10, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION OF
WASHINGTON, D. C., and JOSIAH C. STODDARD and ADDISON G.
DUBOIS, Trustees, Defendants.

Comes now William B. Nichols, complainant herein, and exhibits
this his bill of complaint, and shows as follows:

1.

That complainant William B. Nichols is a citizen of the United
States, a resident of Jefferson county in the state of West Virginia
and brings this suit in his own right as hereinafter set forth.

2.

That defendant Washington National Building and Loan Association of Washington, D. C. is a corporation duly incorporated under the laws of Virginia and does business in the District of Columbia, and has its principal and business office in said District and all its books of account, records, and all other data having reference to the business of said corporation are in said District, and it is sued as hereinafter set forth.

3.

Defendants Josiah C. Stoddard and Addison G. Dubois are citizens of the United States. Defendant Dubois is a resident of the District of Columbia, and defendant Stoddard is a resident of the county of Montgomery in the state of Maryland, and are sued as trustees.

4.

January 2, 1897, complainant William B. Nichols was the owner in fee simple of two certain pieces or parcels of real estate situate in said Jefferson county in the state of West Virginia and described in a certain deed of trust hereinafter mentioned.

5.

On, to wit: January 2, 1897, complainant borrowed in the District of Columbia of defendant Association eleven hundred (\$1100.) dollars, payable in said District of Columbia, and executed to defendant Association to secure payment of said amount borrowed, a bond for twenty-two hundred (\$2200.) dollars, and a deed of trust dated January 2, 1897, and recorded February 17, 1897 in the land records of said Jefferson county in the state of West Virginia, in book 82, page 477, by which he conveyed said land and premises therein described to said trustees to secure payment to defendant Association of said eleven hundred (\$1100.) dollars, together with six (6) per cent. interest thereon until paid.

3

6.

This complainant has long since paid all of said loan together with six per cent. interest thereon and several hundred dollars in addition thereto, the said additional amount being paid at the request of defendant Association and without knowledge at the time of payment, on the part of this complainant, that he was not then indebted to the Association.

7.

When complainant made said loan, he was required by defendant Association to pay and did pay in advance to it eleven (\$11) dollars admission fee, and fifty-two and 80/100 (\$52.80) dollars in addition thereto, called advance payments.

This sum of sixty-three and 80/100 dollars was withheld by defendant Association out of the said eleven hundred dollar loan which was thereby reduced to \$1,036.20.

Defendant Association gave receipt for said \$63.80, signed by its secretary, in a pass book which was thereupon delivered to complainant.

This loan was to be paid in ninety-six (96) monthly payments, and complainant has made monthly payments on account of same as follows:

He paid Dec. 31, 1896, (called admission fee)	\$11.00
During 1897, he paid \$17.60 monthly	211.20
1898 17.05	204.60
1899 16.50	198.00
1900 15.95	191.40
4 1901 15.40	184.80
1902 14.85	178.20
1903 14.30	171.60
1904 13.75	165.00
1905 5.50	66.00
1906 5.50	33.00
	<hr/>
	\$1614.80
	<hr/>

Complainant now makes tender and is ready to pay any amount which he owes defendant Association, but says he is not indebted to it.

When this loan was made, this complainant was assured by officers of defendant Association and he understood and believed that his said total indebtedness to defendant Association would be paid in said ninety-six monthly payments.

He now says it was all paid several months before all said ninety-six monthly payments had been made.

When complainant had made ninety-six monthly payments, he called upon defendant Association to furnish him a release of said deed of trust, and cancel and deliver said bond to him, but was informed by said Association that he would now be required to pay five and fifty hundredths (\$5.50) dollars monthly for interest until the maturity of certain stock of said Association.

This information was given complainant in writing February 1, 1905, and ever since that time he has been making efforts to learn when said stock will mature and what is the stock to which reference is made, and so far has been unable to receive any answer from said Association other than that the officers of defendant Association could not tell when said stock would mature.

Meantime, notwithstanding the fact that all said loan has been long since paid in full, and that only \$1036.20 was loaned, complainant has been paying promptly each month for nearly two years last past, by express demand in writing of defendant Association, six per cent. interest on eleven hundred dollars, and is told by defendant Association he must continue to pay same.

Complainant at the time of making said loan received from said Association a certain paper that was called stock of said Association, and was required by it at that time to endorse the same in blank and return it to said Association, all of which he did.

Said certificate of stock was number 18941, of series numbered 46, and this complainant has no knowledge of any other stock of said Association.

At the time of making said loan and executing, signing and endorsing said deed of trust and bond and stock complainant was acting in good faith and on the assurances and representations of officers and agents of said defendant Association that by reason thereof, complainant would obtain the use of said borrowed money at interest less than six per cent. per annum.

Complainant relied on said assurances and representations at the time, and now avers it to be a fact that he was thereby misled and prejudiced, and is now entitled to relief from compliance with the terms of said contract so entered into by him and which he says are harsh, oppressive, usurious and unlawful.

Complainant is still the owner of two said parcels of real estate, one of which was released June 7, 1904.

Complainant says he is not indebted to said Association by reason of the premises hereinbefore set forth or otherwise and that he now has a right to a release of said deed of trust and the cancellation of said bond, and the repayment to him of the amount he has overpaid said Association amounting to several hundred dollars, the exact amount of which he is unable to state.

Complainant says that defendant Association has threatened to direct and require defendant trustees to sell said real estate in said deed of trust mentioned and complainant fears that such threat will be carried into execution. If same is done, it will cause irreparable injury to complainant.

Complainant says that said deed of trust and said bond are legally binding, efficacious and enforceable only to the extent of requiring the complainant to pay the said loan of eleven hundred (\$1100.) dollars with six per cent. interest thereon, and beyond that are null and void and of no force and effect.

Complainant says that he has paid said loan of eleven hundred dollars together with the legal rate of interest thereon and is now entitled to the release of the said deed of trust, and the cancellation of said bond, but that said Association, upon request, refused and still refuses to cancel said bond or direct or permit defendant trustees to release said deed of trust, and demands of complainant that he continue to pay monthly, \$5.50 which is six per cent. interest on eleven hundred dollars, when the fact is, defendant Association loaned him only one thousand, thirty-six and 20/100 (\$1,036.20) dollars, less than ten years ago, and on account of which he has paid one thousand, six hundred forty-eight and 80/100 (\$1,648.80) dollars.

Complainant does not owe defendant Building Association and is under no obligation to it legally, equitably or otherwise.

Defendant Association owes complainant several hundred dollars, the exact amount of which complainant is unable to state.

Complainant is entitled to have an accounting.

Complainant is entitled meantime to have defendant Association and defendant trustees enjoined from selling or attempting to sell complainant's real estate hereinbefore mentioned.

Complainant is entitled to have said deed of trust released, and said bond cancelled.

Complainant is entitled to have a re-payment to him from defendant Association of the full amount which it now owes and which has been collected from him by it as aforesaid.

Premises considered, complainant respectfully asks as follows:

1.

8 That summons issue directed to the Washington National Building and Loan Association of Washington, D. C., and Josiah C. Stoddard and Addison G. Dubois, trustees; defendants herein, requiring them to appear and answer this bill.

2.

That the defendants be temporarily and permanently enjoined from proceeding to sell or offering for sale the said land and premises belonging to this complainant.

3.

That the Court decree that the said deed of trust and bond are in effect only a contract to provide for the payment of the said eleven hundred (\$1100.) dollars, with legal interest, borrowed of the defendant Association, by complainant, and subjecting said land and premises therefor as security, and that all and singular the other provisions therein, with the exception of those relating to release, insurance, and taxes, are wholly null and void and of no force and effect.

4.

That the court decree that all the conditions in said bond and said deed of trust legally binding upon the complainant to do and perform in regard to the payment of the said loan of eleven hundred (\$1100.) dollars, have been done and performed, when said loan of eleven hundred dollars together with the legal interest thereon has been fully paid.

5.

9 That defendant trustees be required by decree of this court to execute a proper deed of release to the land and premises herein mentioned, and that defendant Association be required to cancel said bond and deliver it to this complainant.

6.

That this cause be referred to the auditor of this court for an accounting herein, and defendant Association be required to pay such sum, if any, as is found to be due to complainant.

7.

That complainant be allowed to amend this bill at any time if same be required, advised or desired.

8.

For any and all such other and further relief as complainant may be entitled to receive in the premises.

WILLIAM B. NICHOLS.

I, William B. Nichols, do solemnly swear that I have read the foregoing bill of complaint by me signed, and know what it contains, and that the statements therein made of my own knowledge are true and those made on information and belief, I believe to be true.

WILLIAM B. NICHOLS.

Signed and sworn to before me in Jefferson county, West Virginia, December 6th, 1906.

[SEAL.]

CHAS. H. BRIGGS,
Notary Public.

T. L. JEFFORDS,
Attorney for Complainant.

10

Answer of Defendants.

Filed February 1, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,
vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL.,
Defendants.

For answer to the bill of complaint filed in the above-entitled cause the defendants, Washington National Building and Loan Association, Josiah C. Stoddard and Addison G. Dubois state to the court as follows:

1. They admit the matters and things stated in the first paragraph of the bill of complaint.

2. They admit said association is a corporation under the laws of the State of Virginia, but aver that the home office of the association is in the City of Alexandria, Virginia, and its central office is in the City of Washington, and they further aver that it has complied with the laws of the State of West Virginia in accordance with Chapter 54 of the Code of West Virginia, and is authorized to do business in that State.

3. They admit the residence of the trustees under its deeds of trust.

4. They believe the matters and things stated in paragraph four

11 of the bill of complaint to be true, but for greater certainty they ask that the complainant may be required to prove said allegations by the record.

5. They deny that the said William B. Nichols borrowed in the District of Columbia from the defendant association the sum of \$1100.00, but assert the fact to be that the said Nicholas made application through the local board of the said association at Harpers Ferry, West Virginia, for an advance of \$1100.00, accompanying the same with a written bid for a premium, which application was acted upon by the local board and sent to the central office of the said defendant association, and upon the representations therein made the said association advanced the said Nichols the sum of \$1100.00 on eleven shares of stock held by the said Nichols in said association, and the money in payment of the same was paid to the said Nichols in the town of Harpers Ferry, or Charlestown, West Virginia. They admit the execution of the bond referred to and a deed of trust to secure the advance made as aforesaid; that said deed of trust sets forth the agreement in accordance with which said advance was made, a copy of the same being hereto attached and prayed to be read as a part hereof.

6. Defendants deny that said complainant has repaid said advance or overpaid the same, but on the contrary aver that said complainant is still indebted to the defendant association in a large sum of money, to wit, \$538.78.

7. These defendants admit that at the time of making said advance said association deducted \$10.00 admission fee, and the sum of \$52.80 to cover dues, interest and premium for January, February and March, 1897, on account of said advance, in order to
12 comply with the by-laws of said defendant association, and they further say that said complainant received full credit for the said payments so made. They admit the giving of the receipt for \$63.80, and the issuance of the pass book.

They deny that said advance was to be repaid in 96 monthly payments, but say that by the provisions of complainant's bond it was agreed that no payments on account of stock or premiums should be exacted for a longer period than 96 months from the date of said stock, but that should said shares fail to mature before the expiration of said 96 months, then 6% per annum on the original amount advanced should continue to be paid in monthly installments until said stock should mature, when all payments should cease and the deed of trust be canceled.

They admit that complainant has made the payments mentioned in said paragraph. They deny that said complainant received any assurance whatever that his advance would be repaid in 96 monthly payments, but on the contrary aver that the deed of trust above referred to sets forth the agreement between complainant and defendant association.

They deny that said advance has been repaid according to the contract. They admit that complainant, through his attorney, made demand for a release of said deed of trust and cancellation of his

bond and that said association required him to pay \$5.50 a month according to the contract above set forth.

They further say that said association informed complainant that he would have to continue such payments until the stock
13 held by complainant matured. They deny that said advance has been repaid and that only \$1036.20 was advanced, but say that \$1100.00 was advanced to complainant, and by agreement his first three months' dues and admission fee were deducted therefrom. They admit the issuance of the stock referred to, its endorsement and return to said association, and they say that such is the usual method adopted by all building associations. They admit the bill correctly sets forth the number of the certificate and series of said stock. They deny absolutely that any representations were made to the complainant by said association, or any of its officers, that the complainant could secure the said advance at a rate of interest less than 6% per annum, and they deny that the complainant was misled or prejudiced by any representations made to him by the defendant association or any of its officers.

They aver that said advance was made in all respects in compliance with the laws of the State of Virginia, the home state of the association, and the laws of the state of West Virginia, then in force, the home of the complainant, and in accordance with the by-laws of the said association then in force, and the terms and conditions upon which the said advance was made are fully set forth in the deed of trust hereto attached and the written bid and application of the complainant filed in the office of the association.

They admit that one piece of complainant's property was released as set forth in the bill, but defendants have no knowledge whether
14 complainant is still the owner of the property referred to in the bill, and call for proof thereof by the record. Defendants say complainant is still indebted to said association in a large sum of money, and is therefore not entitled to have said property released or his bond canceled, and they deny he has overpaid said association in any sum whatever.

Defendants further say that whether said trust and bond are legally binding or not is a question of law which they do not feel called upon to answer.

Defendants again deny that said advance has been repaid, or that complainant is entitled to a release of said trust and cancellation of his bond, and admit that they refuse to release said trust and cancel said bond. And that they still claim complainant must pay the sum of \$5.50 a month interest in accordance with the terms of his contract.

They say that complainant has paid the sum of \$1614.80 and not the sum of \$1648.80, as alleged. They deny that the defendant association is indebted to complainant in any sum whatever.

Further answering said bill these defendants say that a bill has been filed in the Circuit Court of Jefferson County, West Virginia, by said defendant association against complainant, and the trustees under its deed of trust, for the purpose of foreclosing said deed of trust and the ascertainment of the amount due said association by

reason of complainant's bond, and these defendants respectfully submit that this court should not undertake to adjudicate the matters in dispute between the parties hereto, but leave the entire matter to the courts of West Virginia, especially in view of the fact that the deed of trust expressly provides that the contract shall be interpreted in accordance with the laws of Virginia, the home of the defendant; that complainant is a resident of said state, the subject matter of the controversy is located there and the contract was to be performed there.

Wherefore they pray that the prayers of complainant's bill be denied and that it be dismissed.

WASHINGTON NATIONAL BUILD'G
& LOAN ASS'N,

[SEAL.]

By JOSIAH C. STODDARD, *Secretary*.
JOSIAH C. STODDARD, *Trustee*.
ADDISON G. DUBOIS, *Trustee*.

We solemnly swear that we have read the foregoing answer by us subscribed and know the contents thereof; that the matters and things therein stated on personal knowledge are true, and those stated on information and belief we believe to be true.

JOSIAH C. STODDARD.
ADDISON G. DUBOIS.

Subscribed and sworn to before me this 23d day of January, A. D. 1907.

[SEAL.]

CLARENCE E. LATIMER,
Notary Public.

Washington National Building and Loan Association of Washington, D. C.

This Deed, Made this second day of January, in the year of our Lord one thousand eight hundred and ninety seven, by and between William B. Nichols, unmarried, of the town of Harpers Ferry, in the County of Jefferson, and State of West Virginia, party of the first part, and Josiah C. Stoddard and Addison G. Dubois, of the City of Washington in the District of Columbia, parties of the second part.

Whereas, the said Wm. B. Nichols, party of the first part, in and by his bond or obligation, under his hand and seal, bearing even date herewith, stands bound unto the Washington National Building and Loan Association, of Washington, D. C. (a body-corporate under the laws of the State of Virginia, and under and subject to which laws these presents are executed) in the sum of Twenty-two Hundred (\$2200.) Dollars, conditioned for the payment of the sum of Eleven Hundred (\$1100) Dollars this day advanced unto the said Wm. B. Nichols by said Association for the redemption of Eleven (11) shares of the Forty-sixth (46th) series of stock therein in the manner and form prescribed by the Charter, By-Laws, and Regulations of said Association, as follows: First, As dues, the sum

of sixty cents per share on each and every of said shares of stock, monthly, on or before the last business day of each and every month hereafter. Second. At the same date, interest on said advancement at the rate of fifty cents per share on each and every of said shares of stock monthly. Third. At the same date, a monthly premium of fifty cents per share on each and every of said shares of stock for the first year from the date hereof, and for each year thereafter a monthly premium of ten per cent. thereof, less than the year next preceding (the same being the premium bid for said advancement), and such fines, charges, and assessments as may be imposed thereon under the Charter, By-Laws, and Regulations of said Association, until such time as said shares of stock shall be fully paid up; and pay all taxes, insurance premiums, and assessments on the real estate therein described, and shall faithfully perform all other obligations to the said Association as provided and imposed by, and in pursuance of, said Charter, By-Laws, and Regulations, and any amendments thereto, with a proviso that no payments on account of stock or premiums shall be exacted for a longer period than ninety-six months from the date of said stock; but should said shares of stock fail to mature on or before the expiration of said period of ninety-six months, then six per cent. per annum on the original amount advanced thereon shall continue and be paid in monthly installments until said stock shall mature, when all payments shall cease and the deed of trust securing said bond be cancelled. And with a further proviso that if at any time default be made and six consecutive months are suffered to elapse without paying up all instalments of interest, premiums, and monthly dues on said stock, and all fines for the non-payment thereof, as aforesaid, or any or either of them, then, and in such case, the credit given on said advancement shall cease and determine, and said advancement, with the interest thereon, and the monthly dues and fines for the non-payment thereof, shall be taken and considered as presently due and payable, anything therein contained to the contrary notwithstanding.

18 Now, therefore, This Deed Witnesseth, that the said party of the first part, as well for and in consideration of the premises as of the aforesaid sum or advancement of Eleven Hundred (\$1100) Dollars, and for the better securing the payment of the same, with interest, together with the dues and premiums on the said shares of stock, as aforesaid, and all fines for the non-payment of said dues and premiums unto the Association aforesaid, or its assigns, in discharge of the above recited obligation; as of the further sum of One Dollar, lawful money, unto him in hand well and truly paid by the Association aforesaid, the receipt whereof is hereby acknowledged, do hereby grant and convey with covenants of general warranty of title unto the said parties of the second part, the survivors or survivor of them, their or his heirs and assigns, the following-described real estate situate in the town of Harpers Ferry, County of Jefferson and State of West Virginia, to-wit:

All those two certain pieces or parcels of land and premises respectively bounded and described as follows, to-wit:

First. Lot No. Three (3) in Block "K. K." fronting sixty (60) feet on Washington Street, two hundred and three (203) feet on west line of Lot No. Two (2) and two hundred and three feet on the east line of lot No. Four (4), in same block; being the same property conveyed to the said Wm. B. Nichols by Wm. Exner and wife by deed dated the twentieth day of May, 1893, and recorded in the Clerk's Office of the County Court of said County of Jefferson, State of West Virginia, in Deed Book Number Seventy-four
19 (74) page four hundred and nineteen (419).

Second. Beginning at the northwest corner of Lot No. Fifty Three (53) on High Street, and running easterly with the front thereof along High Street twenty-eight (28) feet, three and one-half inches ($3\frac{1}{2}$); thence southerly, dividing the said lot Number Fifty Three (53), back to the public walk in the rear of the houses on said lot; thence westerly with said public walk to the southwest corner of said lot, twenty eight (28) feet three and one half ($3\frac{1}{2}$) inches the same distance as the first line; and thence to the beginning; being the same property conveyed to the said William B. Nichols by deed duly recorded in the Clerk's Office of the County Court of said County of Jefferson, State of West Virginia.

To have and to hold the said described real estate, and all buildings, privileges, and appurtenances of every kind, belonging to said lands, unto the said parties of the second part, the survivors or survivor of them, their or his heirs and assigns, in fee.

In and upon the Trusts, Nevertheless, hereinafter expressed and none other, that is to say; First. That the party of the first part, his heirs and assigns, may retain possession of the said property, and the rents, issues, and profits thereof, to take, have and to use so long as there shall be no default on his part in performing any of the conditions of said Bond or the covenants herein contained. Sec-

20 ond, That if the said party of the first part, his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the Association aforesaid, its successors or assigns, the aforesaid sum or advancement of Eleven Hundred (\$1100) Dollars, with the interest dues and premium on the shares of stock aforesaid, and all fines for the non-payment of the said dues and premiums on the days and times hereinbefore mentioned and appointed for the payment of the same, and all other proper costs, charges, commissions, and expenses incurred by means of this trust at any time before the sale herein provided for, to release and reconvey the said described real estate and premises unto said party of the first part, his heirs or assigns, at his or their cost. Third. Upon default or failure for a period of six months in the preformance in whole or in part of the stipulations and conditions in said bond or in this deed of trust contained, then, and in that case, the credit given on said advancement shall cease and determine, and the said advancement, with the interest thereon, and the monthly dues and fines for the non-payment thereof, including the taxes, assess-

ments, insurance premiums, costs, charges, and expenses, with interest thereon, due or paid by said Association, or arising, incurred, or expended in or about the protection or execution of this trust, shall at once become due and payable, and the said parties of the second part, the survivors or survivor of them, their or his heirs and assigns, or the Trustee acting in the execution of this trust, when thereunto requested in writing by said Association, shall sell at public auction, for cash, the property herein conveyed, or so

21 much thereof as said trustees may deem necessary, with the appurtenances, after having given at least two weeks' notice of the time place and terms of sale in one or more newspapers published in the County of Jefferson, State of West Virginia; and upon such sale being made, and full compliance with the terms thereof by the purchaser or purchasers, said trustees shall convey to, and at the cost of, the purchaser or purchasers thereof, his, her, or their heirs and assigns, the land and premises sold, with the appurtenances, without any liability on the part of said purchaser or purchasers to see to the application of the purchase money, and thereupon all the right, title, interest and estate, real, legal or equitable, whether in possession, reversion, or remainder, of the said party of the first part, his heirs or assigns, in and to the same shall cease and determine. Fourth, The said parties of the second part, their survivors or survivor, or the trustee acting in the execution of this trust, shall apply the proceeds of sale as follows; First: To the payment of the expenses attending the execution of this trust, including all taxes and assessments, general and special, due upon said land and premises at the time of sale, and such commission to said trustee as is allowed by law. Second: To the payment of whatever sum or sums of money may be found owing hereunder and under the terms and conditions of said bond to the said Washington National Building and Loan Association, upon an account to be stated by its Secretary to the date of sale whether the same shall then have

22 matured or not. Third: To pay the surplus, if any, to the grantor, his executors, administrators, or assigns, or whoever may be entitled thereto.

Provided further, and the said party of the first part does hereby covenant and agree for himself, his heirs and assigns, to and with the Association aforesaid, and its assigns, that so long as the advancement hereby secured remains unpaid he will — and truly cause to be insured, for the use of the Association aforesaid, the buildings erected, or to be erected, on the premises hereinbefore described against all loss or damage by fire, to the amount of not less than Eleven hundred (\$1100) Dollars, in such insurance company as shall be designated or approved by the Association aforesaid, or its assigns, and pay all costs and expenses thereof, and all taxes and assessments upon said premises, pledged as security for the faithful performance of the conditions of said bond, including all costs thereon paid or expended in consequence of said advancement of Eleven hundred (\$1100) Dollars aforesaid, or in protecting any security given for this bond; and should said party

of the first part, his heirs or assigns, fail so to do, then said Association, or its assigns, or the said parties of the *first* part, their survivors or survivor, or the trustee acting in the execution of this trust, shall be at liberty to insure such buildings for at least the sum aforesaid, and pay all taxes, assessments, expenses, and charges aforesaid, and all sums of money so paid by said Association, or said parties of the *first* part, or the Trustee acting in the execution of this trust, including the interest thereon, shall be deemed
 23 and treated as secured by this conveyance, and as a part of the costs and expenses of this trust, to be paid out of the proceeds of the sale of said property, if not otherwise paid.

And the said party of the first part hereby waives and releases all claim to homestead and dower in the property herein described as to the advancement, obligation, or contract hereby secured.

And it is further understood and agreed by and between all the parties hereto that this deed, as well as the bond hereinbefore mentioned, is a Virginia Contract, and is and shall be in all respects governed by the laws of the State of Virginia.

Witness the following signature and seal the day and year first above written.

W. B. NICHOLS. [SEAL.]

STATE OF WEST VIRGINIA, *County of Jefferson, To wit:*

I, H. V. Daniels a Notary Public in and for said Jefferson County aforesaid and State of West Virginia, do certify that William B. Nichols, whose name is signed to the foregoing annexed writing, bearing date on the second day of January, 1897, has acknowledged the same before me in my County aforesaid.

Given under my hand and seal this the 30th. day of January

H. V. DANIELS,
Notary Public.

[N. P. SEAL.]

24 STATE OF WEST VIRGINIA, *County of Jefferson:*

Received for record on the 17th. day of February 1897 at 12 o'clock M. and recorded in deed book, No. 82, page 477, one of the lands records of Jefferson County West Va.

W. F. ALEXANDER, *Clerk.*

Filed at January Rules, 1907.

JOHN M. DANIEL, *Clerk.*

STATE OF WEST VIRGINIA, *County of Jefferson, set:*

In the Clerk's Office of the Circuit Court.

I, John M. Daniel, Clerk of said Court, do hereby certify that the foregoing is a true and accurate copy of an exhibit filed in said office in the case of Washington National Building and Loan Association vs. William B. Nichols &c.

In testimony whereof I hercunto set my hand and affix the seal of said Court at Charlestown W. Va. this 23rd. day of January, 1907.

JNO. M. DANIEL,
Clerk as Aforesaid.

25

Replication.

Filed February 6, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26752.

WM. B. NICHOLS, Plaintiff,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION and
JOSIAH C. STODDARD and ADDISON G. DUBOIS, Trustees, Defendants.

The complainant hereby joins issue with the defendant.

T. L. JEFFORDS,
Attorney for Complainants.

Stipulation.

Filed March 26, 1907.

Equity. No. 26752.

WM. B. NICHOLS, Complainant,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL.,
Defendants.

26 It is stipulated in the above entitled case that defendants' testimony in Pifer case in this Court Eq. 26,124 shall be considered as far as applicable, the testimony of defendants in this case, and that testimony for all parties is closed.

T. L. JEFFORDS,
Attorney for Complainant.
M. J. COLBERT,
Attorney for Defendants.

Testimony on Behalf of the Complainant.

Filed March 26, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL.,
Defendants.

Be it remembered that at an examination of witnesses in the above styled cause, begun and held in the City of Washington, District of Columbia, on the 18th day of February, 1907, at the times and place mentioned in the caption, when the within depositions were taken, personally appeared before me, William H. Shipley, the following witnesses: William B. Nichols and Tracy L. Jeffords, produced on behalf of the complainant in said cause, with due
27 and sufficient notice to the Solicitor for the defendant-, which said witnesses after being each by me duly sworn to testify and speak the truth, the whole truth and nothing but the truth, touching the matters at issue in said cause, did depose and say what is hereinafter set forth as being by them testified to.

WILLIAM H. SHIPLEY,
Examiner in Chancery.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,

vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL.

WASHINGTON, D. C., *Feb'y* 18, 1907,
Monday, at 11 o'clock a. m.

Met, pursuant to notice hereto attached, on the date above indicated, at the offices of T. L. Jeffords, Esq., Columbian Building, No. 416 Fifth Street, Northwest, to take testimony on behalf of the complainant in the above indicated cause.

Present: Tracy L. Jeffords, Esq., Counsel for complainant, and M. J. Colbert, Esq., Counsel for the defendant.

28 Whereupon WILLIAM B. NICHOLS, a witness of competent age, called for and on behalf of the complainant, being the complainant, having been first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. JEFFORDS:

Q. Please state your full name? A. William B. Nichols.

Q. Where do you reside? A. Harpers Ferry, West Virginia.

Q. Have you had dealings with the Washington National Building Association? A. I have.

Q. What were your first dealings with them? A. The first dealings I had with them, with this association—I don't remember whether it was ten or eleven shares—I think it was ten shares to the best of my recollection.

Q. Please fix the time as near as you can? A. Well, I think it was somewhere in 1896; I don't know exactly—somewhere about two or three years of that time.

Q. How long did you continue a share-holder—about how long did you continue a share holder? A. I think it was about
29 some three or three and a half years—something like that.

Mr. BRADY: I object to all this testimony, and ask that it be confined to the shares that the complainant is the owner of, as set forth in the bill of complaint in this case.

Mr. JEFFORDS: Complainant was never the owner of any other stock than that about which he is testifying in this case.

Q. Now, Mr. Nichols, did you borrow any money of this association at any time? A. I did, sir.

Q. Can you give the date? A. Not exactly, without looking at the books there.

Q. I hand you your pass book, and ask you to fix the date, the date when you became a borrower, if you can, by looking at it? A. Well, this is the 12th month here—this was made out on the 31st of December 1896.

Q. 1896? A. Yes, sir, 1896.

Q. It was December 1896, when you borrowed of this Association? A. Yes, sir.

Q. With whom did you have your talk, and where, in relation to this loan? A. Why, I had it with the Secretary after they had come to know that I wanted to be a borrower; they were up there, the secretary and some other gentleman, but I don't know this other gentleman's name.

30 Q. Was the name of the secretary J. C. Stoddard? A. I think it is.

Q. You say they came to Harpers Ferry and made you this loan? A. Yes, sir.

Q. Who was their agent? A. I don't know—I suppose he was their attorney though.

Q. State what took place between you and the secretary of this company, Mr. Stoddard, when he came up there to Harpers Ferry,

West Virginia, to make you this loan? A. Well, there was not very much that took place. I said to him that I would like to get a loan from the Association, and he asked me what security I could give him for the money. I told him that I supposed they would want a deed of trust on the property which I had, also on the property I was going to buy; I had property on High Street, and in Harpers Ferry, and then on Washington street. They took \$1,100. on that, and the property I purchased down there; they took a deed of trust on the two.

Q. How much was your loan then? A. My loan there was \$1100., and was secured on these two pieces of property.

Q. That was secured on these two properties mentioned? A. On those two pieces of property, yes, sir.

Q. What about an appraisement, if any was made of this property?

A. There was an appraisement they had—a gentleman there,
31 and their local agent.

Q. Who superintended, or caused, this appraisement, if you know?

Mr. BRADY: If you know of your own personal knowledge—not what somebody told you.

A. I told you, so far as I know, Mr. Stoddard had had it done. I know that of my own knowledge; there were five of them who went up to the upper property on the hill, and appraised it there; and also they took the property I purchased there in the Ferry at \$1,100., and I paid \$1100.00 for it, and I gave \$50. of it to Exner, a gentleman, who said he was on his way to Baltimore. I bought the property of him.

Q. This property that you speak of on High street you bought from—— A. Yes, sir, at \$1100.

Q. And who paid him, if you know, the other \$1,000? A. The Association I suppose as far as I know.

Q. Did you ever receive from the Association any of this \$1100.00? A. I did not, sir; I did not receive \$1. even of it.

Q. Did you make any application in writing for a loan, and accompany it by a bid to the local board? A. No, sir. All that I said to the local board—there was no local board that I know of up there; Mr. Ames was their collector there at that time—well, of course, I bought my stock, and handed him remittances.

32 Q. Did you know of any local board there? A. I do not, sir.

Q. In fact, all the dealings you had about this loan were with him? A. All the dealings I had was with Mr. Stoddard, and with the other gentlemen who were up there that I met in dealing with. I don't know anything about it at all except to hand them over the insurance papers on Washington Street; they called for them, and they took all the papers, and the deed. Of course they did not ask for the deed of the other property; they just took the insurance policy, of course I had to give a deed of trust. They turned that over to me after I had pretty well paid up, as I wanted to sell the property—I am speaking about the property on Washington street.

Q. That has been released? A. Yes, sir.

Q. So that the only property now under a deed of trust is the property on High street? A. Yes, sir.

Q. That is the property you have described in your bill of complaint here? A. Yes, sir.

Mr. BRADY: Objected to because there is no property described in the bill of complaint.

A. In fact there is more of the property now than there was when they got the deed of trust on it; I built an addition of twenty feet to it.

33 Q. The property you speak of now on High Street is the property on which this Building Association has its deed of trust? A. Yes, sir; they released the other one; then I asked for this release to sell it, and they wrote me, and asked me to have it appraised, and I did so, and I sent it down; they then gave me the release. The property I am now in was appraised at \$3,000., and then they sent me the release. It was signed by the Postmaster at Harpers Ferry, and the cashier of the bank, and some one else; so they gave me the release.

Q. Since you gave the deed of trust to this Association on this property, which is not released, have you made any other disposition of any kind of it? A. No, sir, I have not.

Q. So the title stands at the present time in you the same as it did when you gave the Association this deed of trust? A. Yes, sir, there is nothing on it, only what they held on it, by any one.

Q. Now, when you borrowed this \$1100., did the Association issue to you any capital stock? A. No, sir.

Q. What other papers, applications, or bids, or other written instruments of any kind, were exhibited to you and written by you, except the deed of trust and the bond to secure this loan? A. None, sir, that I know of at all.

34 Q. When you received this \$1100. loan, how much money did the Building Association pay to you? A. Not as much as one cent.

Q. What did they do with the \$1100.? A. I could not tell you that, sir.

Q. How much did they agree to deliver to you on account of this \$1100. loan? A. They did not agree to deliver any to me, sir.

Q. What did they agree to do with it? A. They agreed to pay it to the party for the property, of course.

Q. How much did they pay to him? A. There was \$1,050. I had given them \$50.

Q. Well, the rest of that \$1100. you never received? A. No, sir, I never did.

Q. You say you never received it directly, or indirectly? A. No, sir.

Q. Nor anybody for you received it so far as you know? A. No, sir.

Q. Well, after you made this loan, you began making payments did you? A. Yes, sir, I paid them—I started off with Seven Dol-

lars and something a month for the first year, and it was reduced fifty-five cents every year after that until it was paid up.

Q. I see in your book here an admission fee of \$11.00—
35 was that taken out of your \$1100. loan? A. I suppose it was—I don't know—I suppose it was because I didn't get it.

Q. Was three months' dues \$17.60 taken out of your loan? A. Yes, sir, three months \$52.80.

Q. How did you get this book—how did it come to you? A. Why, the local collector there handed it to me—it was handed me by him.

Q. When Mr. Stoddard, the Secretary of the Building Association, was at Harpers Ferry and made you this loan, what was your agreement with him about the payment of it?

Mr. BRADY: I object to that question on the ground that the contract between this complainant and the defendant Association is fully set forth in writing, the terms of the deed of trust; also the bond signed by this complainant at the time of making the loan.

A. There was not any special agreement of it at all, only I said to him I would like to pay it out, or pay it off, as soon as I could make my payments. Then they just fixed it up, and started me off paying \$11. and so much a month during that year.

Q. Was anything said about interest—what did you agree to pay? A. Nothing said about the interest; I told him to just fix it up so that I could pay that money back just as soon as I could—I
36 told him that I wanted to pay it back just as soon as I could fix it up—I told him to fix it that way.

Mr. BRADY: I make the same objection.

Q. What did you pay? A. They started me off at \$17.60 a month.

Q. Well, at the same time you were paying on this loan at the beginning—were you a stock holder paying on that stock about which you have testified? A. I was, yes, sir.

Q. How long were you then a stock holder, and paying on the stock before you became a borrower and began to pay on that loan?

A. I think, to the best of my recollection, either three or three and a half years before I asked them for a loan.

Q. Well, after you did make the loan, then you began payment of it, did you? A. Yes, sir.

Q. Were you still carrying that stock which you had taken two or three years earlier? A. I was, sir.

Q. How long after you made the loan did you continue to carry that stock as a stock holder? A. Probably a year, or a little over.

Q. Then, during that time a year, or a little over, you were a stock holder paying monthly on your stock? A. I was a borrower and paying monthly on my loan; I did both.

37 Q. So that you had two relations with the Company? A. I did.

Q. Separate and distinct? A. Yes, sir, at that time.

I renew my objection regarding the prior issuance of stock—

that the testimony should be directed to that set forth in the bill of complaint.

Q. What did you do as to your stock? A. Well, when I was burnt out there I redeemed the stock that I had with the Association to help to replace myself back again—replace the building. In other words I turned in the stock.

Q. In other words, you turned in your stock and got your money? A. Yes, sir.

Q. It was an entirely satisfactory transaction, was not it? A. Yes, sir.

Q. You think that was a year and a half after you made the loan? A. Yes, sir.

NOTE.—It is stipulated and agreed between counsel that the bill of complaint in this case refers to the following described property: "Beginning at the northwest corner of Lot No. Fifty Three (53) on High Street, and running easterly with the front thereof along High Street twenty-eight (28) feet, three and one-half inches ($3\frac{1}{2}$); thence southerly, dividing the said lot number Fifty 38 Three (53), back to the public walk in the rear of the houses on said lot; thence westerly with said public walk to the southwest corner of said lot, twenty-eight (28) feet three and one-half ($3\frac{1}{2}$) inches the same distance as the first line; and thence to the beginning; being the same property conveyed to the said William B. Nichols by deed duly recorded in the Clerk's Office of the County Court of said County of Jefferson, State of West Virginia," and that the testimony of the witness is directed to this parcel of land, and that the complainant is the present owner thereof.

Q. Look at that book, and tell us how long you continued to pay on this loan? A. From December 31st, 1896, to December 31st, 1905, and since that time up to June 1906.

WITNESS (continuing): This here is the interest that they claimed after I paid the book out.

Q. And so far as you know, do you owe the Washington National Building Association at the present time? A. I don't think I do, because I thought when I paid that book up there I near about paid them, as they added the interest and everything due there.

Mr. JEFFORDS: I now offer the book in evidence, and ask that it be marked W. B. N. 4, for identification, which will be presented at any other time as called for by Court or Counsel.

Cross-examination.

By Mr. BRADY:

39 Q. Referring to these three payments which were deducted at the time the advances were made by the Washington National Building Association, it appears from the pass book that they were credited for the months of January, February and March, 1897? Is that correct? A. I don't know, sir.

Q. You were not charged again for January, February and March, were you? A. That was taken out of the money, I suppose.

Q. You didn't have to pay again until next April? A. Seventeen Dollars and something was collected by Mr. Stoddard. He received that payment; he brought the book to me. The credit was marked on the book then, \$17.60 for the first three months.

Q. Now, on direct examination, in reply to a question by Mr. Jeffords you stated that you never saw any stock, or never saw the entries of any stock at the time this loan was made? A. I did not.

Q. It appears from paragraph 7, of your bill of complaint which is sworn to by you, that you made this allegation: "When complainant made said loan, he was required by defendant Association to pay and did pay in advance to it — (\$11) dollars admission fee, and fifty-two 80/100 (\$52.80) dollars in addition thereto, called advance payments. This sum of sixty-three and 80/100 dollars was withheld by defendant Association out of the said eleven hundred dollar loan which was thereby reduced to \$1,036.20." A.

40 I never saw any paper at all. Mr. Stoddard was there, and made me the loan, and paid the man the balance of the money, and that was the end of it as far as I had anything to do with it, only to pay the monthly dues as they became due. I signed what he told me to sign. I never knew I had any stock in connection with this loan.

Q. This statement, which I have just read to you from the bill of complaint is not true—that is that you received this stock, endorsed it and returned it to the Association? A. If there was any paper signed at all by me, the deed of trust was the only one that was signed that I know of. I signed what Mr. Stoddard said.

Q. The statement you made in the bill filed in this case is not true? A. I told you what is correct.

NOTE.—By stipulation of counsel the Examiner was requested to sign the foregoing deposition.

WILLIAM H. SHIPLEY,
Examiner in Chancery.

WASHINGTON, D. C., *March 18th, 1907,*
Monday, at 2 o'clock p. m.

Met, pursuant to agreement, at the offices of M. J. Colbert, Esq., Century Building, No. 412 Fifth St. N. W., Washington, District of Columbia, on the date above indicated to continue the taking of testimony on behalf of the complainant.

Present: Tracy L. Jeffords, Esq., Counsel for complainant. M. J. Colbert, Esq., Counsel for the defendant.

41 Whereupon TRACY L. JEFFORDS, being first duly sworn, was examined and testified as follows:

Direct examination:

My name is T. L. Jeffords and I am attorney for William B. Nichols, complainant herein.

Defendant Association is a corporation chartered under the laws of the state of Virginia and has its central office in the District of Columbia, and all its books, papers, records, files and evidence of indebtedness to it in the District of Columbia.

Its principal, if not all its assets are in the District of Columbia. Under its rules and regulations all payments must be made to it in the District of Columbia at its central office and none are recognized and no credit allowed until and unless same are received at said office. Payment to the local collector is not payment to the defendant Association, as such collector is not the agent of the Association but the agent of the borrower.

As attorney for complainant in this case I called at the central office of defendant Association in the District of Columbia in relation to this matter a number of times during September, October and November 1906 and stated that complainant desired to terminate his relations with the Association and withdraw from it and to pay what he owed it if anything and redeem his property and have it relieved from the deed of trust and himself from
42 the bond involved in this litigation, and that if he had overpaid defendant Association he wanted to recover the amount of overpayment, and that he claimed he had overpaid.

I was informed by Secretary of Association that complainant could not withdraw or settle except in strict compliance with terms of said deed of trust and bond. Copy of said deed of trust is part of answer herein. Bond was executed at time complainant borrowed of defendant Association as appears by the pleadings.

The secretary of the Association informed me it was impossible to tell how long it would take to complete said contract and that it would not be complete until the maturity of certain stock and it was impossible to tell when the stock would mature.

I was unable to secure from defendant Stoddard, Secretary of said Association, or otherwise, any information any more definite and asked him to write me a letter concerning the matter as complainant desired to make an early settlement and terminate his relations with the company.

November 1906, I received a letter from defendant Stoddard copy of which is as follows:

"NOVEMBER 6, 1906.

Mr. Tracy L. Jeffords, Attorney at Law, Washington, D. C.

SIR: Referring to our conversation of a few days since
43 with respect to a compromise settlement of the advances made Henry M. Hill, D. A. Osbourn, and W. B. Nichols, of Jefferson county, West Virginia, we now have to say that a final decision has been reached by the Association to the effect that a settlement of the three advances can only be made in strict accordance with the provisions of the contracts.

Yours respectfully,

J. C. STODDARD,
Secretary."

Cross-examination.

By Mr. COLBERT:

Q. Mr. Jeffords, how do you know that all the books, papers, records, and evidence of indebtedness of this Association are in the District of Columbia? A. I have never seen all the books and papers, and only know it from having been in the principal office where I have seen the books and papers kept.

Q. Has any officer of the Association informed you that all of its books, records, files and papers are in the District of Columbia? A. Not in so many words, but in substance: I was informed that this was their principal place of business, and this is where they kept them.

Q. Who made that statement to you, Mr. Jeffords? A. I don't know who it was.

44 Q. You also state in your direct examination that its principal assets, if not all its assets, are in the District of Columbia? You say all of its assets are in the District of Columbia—how do you know that? A. I know that at one time they had about \$60,000. deposited in one bank here, and I learned that they owned real estate mortgages, and based my evidence on that.

Q. Where did you learn that they had about \$60,000 in one bank? A. Shortly before the liquidation of the Ohio National Bank several years ago.

Q. Suppose I should tell you that four-tenths of the assets of this association are on mortgages secured outside of the District of Columbia—would you question that statement? A. I would not question that statement, and intend to say that the evidence of that are here, and the notes and deeds of trust for these bonds are held at this office. They own the real estate where their offices are.

Q. How do you know that under the rules and regulations, that all payments should be made in the District of Columbia? A. The Constitution and By-Laws contain that in print.

Q. You are sure about that, are you? A. Yes. The bond says so on its face.

Q. Don't you know that in the business of the association, loans are payable in the place where the loans are made and the property is situated? A. I do not know that.

Mr. JEFFORDS: Our testimony in this case is closed.

45 NOTE.—It is stipulated between counsel that the testimony in this case, so far as the same is applicable to the Hill vs. Washington National Building Association, No. 26,757, may be used in that case at the hearing.

NOTE.—It is also understood that the Hill case is unlike this in one respect among others, that Hill is not in arrears, and there is no suit pending in the Hill case in any other jurisdiction.

NOTE.—It is also agreed that the Book in the case of Hill vs. Washington National Building Association, No. 26,757, will be

put in evidence in that case the same as it was put in evidence in this case.

It is also stipulated and agreed that the complainant's testimony in the case of Hill vs. Washington National Building Association, may also be considered as closed.

Subscribed and sworn to before me this 18 day of March 1907.

WILLIAM H. SHIPLEY,
Examiner in Chancery.

Decree.

Filed May 1, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,
vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION and
JOSIAH C. STODDARD, Trustee, and ADDISON G. DUBOIS, Trustee,
Defendants.

46 This cause coming on to be heard on the bill, answer, evidence and stipulation and being argued by counsel for all parties, it is this first day of May, nineteen hundred and seven by the Court, considered, ordered and decreed, that the loan of eleven hundred dollars from defendant Building Association to complainant as mentioned in the pleadings herein, be, and the same is hereby found to be fully paid and satisfied.

And further that the real estate mentioned and described in the pleadings herein be, and the same is hereby found to be and is released and discharged and free from the effect and operation of the deed of trust mentioned in the pleadings herein.

And further that the defendants forthwith deliver and cause to be delivered to complainant for cancellation, the bond mentioned in the pleadings herein, and forthwith release and cause to be released to complainant the deed of trust mentioned in the pleadings herein.

And further that if the defendants neglect, fail or refuse to release or cause to be released the said deed of trust within thirty days from and after the signing of this decree, that Tracy L. Jeffords be and is hereby appointed trustee with directions to immediately after the expiration of the said thirty days, execute and deliver to complainant a release of the said deed of trust, and full authority is hereby given him so to do.

And further that defendants, their officers, agents, attorneys and assigns, and each and all of them, be and they are hereby enjoined

47 and restrained from selling, transferring, disposing of, or in any manner attempting to sell, transfer or dispose of said real estate or any part thereof, and from prosecuting or attempting to prosecute any suit or suits in law or chancery for the sale of said real estate, or any foreclosure proceedings by reason of said deed of trust or on account of said bond, in any jurisdiction.

And further that three hundred and twenty-two and 34/100 (\$322.34) dollars have been over-paid by complainant William B. Nichols to defendant Washington National Building Association of Washington, D. C., and the same is hereby found to be, and is immediately due and payable by said Building Association to complainant, with interest at the rate of six per centum per annum thereon, from and after the first day of July, nineteen hundred and six, besides the costs of this suit for which complainant may have execution as at law.

HARRY M. CLABAUGH,
Chief Justice.

Order for Appeal & Citation.

Filed May 22, 1907.

In the Supreme Court of the District of Columbia, the 22 Day of May, 1907.

Equity. No. 26752.

WM. B. NICHOLS

vs.

WASHINGTON NATIONAL BUILDING & LOAN ASSOCIATION ET AL.

All defendants note an appeal from the decree of May 1st 1907 in the above entitled cause & issue citations.

M. J. COLBERT,
Attorney for Def'ts.

48 In the Supreme Court of the District of Columbia.

No. 26752. In Equity:

WILLIAM B. NICHOLS

vs.

WASHINGTON NATIONAL BUILDING & LOAN ASSOCIATION ET AL.

The President of the United States to William B. Nichols, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal noted in the Supreme Court of the District of Columbia, on the 22nd day of May, 1907, wherein the Washington National

Building & Loan Association, Josiah C. Stoddard Trustee & Addison G. Dubois Trustee are Appellants, and you are Appellee, to show cause, if any there be, why the Decree—rendered against the said Appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 22nd day of May in the year of our Lord one thousand nine hundred and seven.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM, *Ass't Clerk*.

Service of the above Citation accepted this 22nd day of May, 1907.

T. L. JEFFORDS,
Attorney for Appellee.

[Endorsed:] No. 26752. Equity. Nichols *vs.* Wash. Nat. B. & L. Asso. Citation. Issued May 22nd, 1907. Served cop- of the within Citation on ———. ——— ———, Marshal. ——— ———, Attorney for Appellant.

49

Memorandum.

May 22, 1907.—Appeal Bond filed.

Designation of Record.

Filed June 1, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26752.

WILLIAM B. NICHOLS, Complainant,
vs.

WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL.

John R. Young, Clerk of the Supreme Court of the District of Columbia:

In making up the transcript of record on appeal in the above-entitled cause, you will please include only the following parts of the record:

1. Bill of complaint and exhibits.
2. Answer of defendants.
3. Replication.
4. Complainant's testimony.
5. Final decree.

M. J. COLBERT,
Def't's Sol'r.

Service ack'd Jn. 1, 1907.

T. L. JEFFORDS,
Comp't's Sol'r.

50 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify the foregoing pages numbered from 1 to 49, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26752, In Equity, wherein William B. Nichols, is Complainant, and Washington National Building and Loan Association of Washington, D. C., *et als.*, are Defendants, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 9th day of July, A. D., 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1806. The Washington National Building & Loan Association *et al.*, appellants, *vs.* William B. Nichols. Court of Appeals, District of Columbia. Filed Jul- 9, 1907. Henry W. Hodges, clerk.